

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

LINDA EDWARDS)	
Claimant)	
VS.)	
)	Docket No. 1,004,636
KANSAS MASONIC HOME)	
Respondent)	
AND)	
)	
KANSAS ASSOCIATION OF HOMES FOR)	
THE AGING INSURANCE GROUP, INC.)	
Insurance Carrier)	

ORDER

Claimant appeals the August 22, 2002 preliminary hearing Order of Administrative Law Judge John D. Clark. Claimant was denied benefits after the Administrative Law Judge determined that claimant failed to prove that she suffered accidental injury arising out of and in the course of her employment.

ISSUES

- (1) Did claimant suffer accidental injury arising out of and in the course of her employment on the date alleged?
- (2) Did claimant provide timely notice of accident pursuant to K.S.A. 44-520?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the evidence presented and for the purposes of preliminary hearing, the Appeals Board (Board) finds that the Order of the Administrative Law Judge should be affirmed.

Claimant alleges she suffered accidental injury to her upper back and head on or about April 29, 2002, while reaching for a box of cereal. It was acknowledged that claimant left work on April 30, 2002, complaining of a headache. However, respondent's internal investigation failed to uncover any claim of accident or any accident report being prepared on or about that date.

Claimant went to the Wesley Medical Center emergency room on April 30, 2002, complaining of pain in her back and also of headaches. Claimant, on one form, advised Wesley Medical Center that she had experienced the pain for approximately one month and it was getting worse. The workers' compensation section on that particular form was left blank.

A patient information sheet also filled out on April 30, 2002, indicated that claimant had injured herself one year ago, with workers' compensation marked as the cause. It is acknowledged claimant suffered a fall on April 25, 2000, but that injury was resolved through a full settlement of all issues on November 19, 2001, with a lump sum payment to claimant of \$7,500.

In workers' compensation litigation, it is claimant's burden to prove her entitlement to benefits by a preponderance of the credible evidence.¹ Claimant alleges she advised respondent of the accidental injury. But respondent denies notice of the accident. The only medical records contemporaneous with claimant's alleged accident failed to mention any work-related connection to the April 29, 2002 alleged accident. The patient information simply refers to claimant's earlier workers' compensation injury, which claimant settled.

The Board finds claimant has failed to prove by a preponderance of the credible evidence that she suffered accidental injury on or about the date alleged or that the alleged accidental injury arose out of and in the course of her employment with respondent. The Board, therefore, finds that the Order of the Administrative Law Judge denying claimant benefits should be affirmed.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge John D. Clark dated August 22, 2002, should be, and is hereby, affirmed.

¹ See K.S.A. 44-501 and K.S.A. 2001 Supp. 44-508(g).

IT IS SO ORDERED.

Dated this ____ day of November 2002.

BOARD MEMBER

c: Joseph Seiwert, Attorney for Claimant
Michael L. Entz, Attorney for Respondent
John D. Clark, Administrative Law Judge
Director, Division of Workers Compensation